IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 30 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE AKSHAY H.MEHTA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

EIDAN RATANSINH SODHA

Appearance:

MR DP JOSHI, APP for Petitioner

MR YS MANKAD for Respondent No. 1

CORAM : MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 25/06/2001

ORAL JUDGEMENT

1. This appeal has been directed against the judgment and order of acquittal passed by the Learned Chief Judicial Magistrate, Kutch at Bhuj in Criminal Case No. 3469/1988 dated 6/9/1991.

2. In the present case respondent was prosecuted for offence made punishable under Sections 420, 465, 468 and 417 (1) of the Indian Penal Code. The allegation against him is that he had appeared in the interview before the committee set up by the Police Department for recruitment of Unarmed Police Constables in the year 1986. In the said interview about 388 candidates were called whose list was supplied by the District Employment Exchange Office, Bhuj. The candidates were called for interview on 3/12/1986 at the Parade Ground of Police Head Quarter. After the interview, respondent was selected for the recruitment and was asked to complete the other formalities before he was appointed as police constable. He was required to submit certificate of physical fitness, surety bond, agreement, school leaving certificate, etc. Accordingly respondent produced these documents which also included school leaving certificate. He was thereafter appointed on probation as police constable by order of the District Police Superintendent, Kutch at Bhuj dated 13/10/1987. The respondent on 18/10/1987 reported for the training. According to the prosecution the school leaving certificate which was produced by respondent dated 2/5/1980 was submitted to the Police Sub Inspector, Anjar for its verification. The Police Sub Inspector, Anjar got it verified and according to his information there was no school named Patidar A.V. school, either Government or private in village Khedoli since the year 1961. However, according to his information the school of that name was in existence prior to 1960, but the same had been closed down in the year 1960 and all the records of that school had been destroyed. His report also revealed that the said certificate was also shown to former head master of said school Shri Umiyashankar Liladhar Tripathi, who had opined that the same was forged. Thus, according to the prosecution, respondent had produced a false school leaving certificate knowing it to be false and forged one and on the strength of such certificate he obtained appointment on the post of Unarmed Police Constable in the Police Department. In the circumstances, the complaint came to be lodged in the City Police Station at Bhuj and thereafter the investigation was commenced, during which statements of various witnesses were recorded. Ultimately at the end of the investigation, the concerned Investigating Officer submitted charge sheet for the offences under sections 420, 465, 468 and 471 of the Indian Penal Code against the respondent in the Court of the Learned Chief Judicial Magistrate at Bhuj. After receipt of the charge-sheet, a case being Criminal Case No. 3469/1988 was registered against the

respondent.

3. At the trial respondent pleaded not guilty and claimed to be tried. The prosecution led oral evidence and examined 8 witnesses and also produced some documentary evidence. On the conclusion of the recording of the prosecution evidence, statement of the accused was taken under section 313 of the Criminal Procedure Code. According to respondent he had never produced the false school leaving certificate, that he had never appeared in the interview; that he had never obtained job in the Police Department and that a false case had been filed against him. Over and above this, the respondent also expressed his desire to examine defence witnesses and accordingly he examined D.W. No. 1 Kirtibhai Nandshankar Tripathi and Juvansinh Jagatsinh. The Learned Magistrate at the end of the trial found respondent accused not guilty of the offences with which he was charged and he acquitted him. The State has therefore, come in appeal to challenge the said judgment and order of acquittal.

4. Mr. D.P. Joshi, Ld. APP appeared for the State and he took me to the evidence led by the prosecution. According to him, there was ample reliable evidence on record to show that it was respondent who had produced false school leaving certificate fully knowing it to be false and on the strength of such false certificate he obtained job in the Police Department. He has further submitted that except the respondent no one else would be interested in producing false certificate as it was the respondent who desired to have job in the Police Department. On going through the prosecution evidence, according to Mr. Joshi, it is very clear that the prosecution has been able to prove the guilt of respondent beyond reasonable doubt and the Ld. Magistrate was in error in holding that the prosecution has failed to prove the case against respondent and thereby acquitting him.

My attention was first drawn to the evidence of Prosecution Witness No. 1 Manoj Devajibhai Maheshwari, who at the relevant time worked in the Sheet Branch and was looking after the recruitment of police constables. According to this witness, in the year 1986 a list of the candidates was to be prepared for the purpose of interview and he had accordingly prepared the list after calling it from the District Employment Exchange Office. In the said list name of the respondent was also there. The concerned candidates were called for the interview on 3/12/1986 and they were directed to appear before the

Recruitment Committee for interview. According to this witness, he was not present when the interview was taken. However, he said that from the record he could state that respondent was selected by the committee. He has further stated that the respondent was required to produce documents such as certificate of physical fitness, school leaving certificate, etc. and he had so done. The respondent was appointed as Unarmed Constable on 13/10/1987 and this witness produced the order of appointment signed by the D.S.P. at Exh. 14. This witness has also produced the report of the P.S.I., who upon verification found that the school leaving certificate was false. The said report has been produced at Exh. 15. He has also identified his signature in the first information report made to the police by him, which has been exhibited at Exh. 17. In the cross-examination by the defence this witness has admitted that when the process of interview was going on, he was not present in the office. He has also admitted that he himself had not received the school leaving certificate and other relevant documents from the respondent. In the cross-examination he has also stated that at the relevant time about 7 persons were working in the Sheet Branch and one head constable Soni was concerned with handing over the charge, taking charge, etc. He has also admitted that no officer had specifically, in his name issued any direction authorizing him to lodge complaint. He has also admitted that he did not have any personal knowledge about the documents submitted in the office by respondent. He has also stated that he did not submit the original school leaving certificate alongwith other documents and only the copies were supplied to the police.

Evidence of this witness does not help the prosecution. This witness has no personal knowledge whether respondent himself appeared at the interview or it was some one else. His evidence does not reveal whether he had ever seen the respondent and no effort has been made by the prosecution to get the identification of the accused made in the Court itself. His evidence therefore does not lead us any where.

5. The prosecution has examined Sevaklal Karshanlal P.W. 2 at Exh. 19. This witness was working in the year 1987 in the Anjar Police Station. He was directed by the P.S.I. to verify the school leaving certificate alleged to have been produced by respondent. He accordingly made inquiry at Khedoi village and gathered the information that no school of the name of 'A.V. Patidar School' was in existence after year 1961.

According to him he had also contacted the former head master of the said school Shri Umiyashankar Tripathi and he had opined that the certificate in question was false one. He also inquired the Panchayat office and found that no child was born to Ratansinh Sodha in the year 1957. After collecting the information he informed the concerned P.S.I. that the certificate was false and on the strength of the information collected by this witness, the P.S.I. prepared a detailed report, which has been exhibited at Exh. 15. If we carefully go through the evidence of this witness, at the most it only proves that the certificate in question was false, but his evidence does not take us any further than that. Even if the prosecution is able to prove that the certificate was false, it has also to conclusively prove that it was respondent, who had produced the false certificate to obtain the job in the Police Department. The evidence of this witness, however, does not throw any light on that aspect of the matter.

6. The prosecution has also examined Shri Umiyashankar Liladhar Tripathi as P.W. No. 3 at exh. 23 to prove the falsity of the certificate. It has also examined Ishvarbhai Vithalbhai Patel as P.W. No. 4 at Exh. 24 to establish the fact that there was no school in the name of 'Shri Patidar A.V. School' existing in Khedoi between years 1978 and 1989. The evidence of this witness has been led with a view to prove that the school leaving certificate alleged to have been produced by the respondent was false. The prosecution has thereafter examined Dhirajlal Naranji Patel as P.W. No.5 at Exh. 26, also for the same purpose. One Hiralal Jerambhai Merai has been examined as P.W. No. 6 at Exh. 27, who worked as Talati-cum-Mantri in Khedoi village at the relevant time. He has been examined by the prosecution to prove that no male child was born to Ratansinh Sodha on 21/11/1965. Except this he does not say much in his evidence. Prosecution witness No.7 is Rajendrasinh Sajjansinh Rana, whose evidence is at Exh. 29. This witness in his cross-examination admits that without verifying the record he would not be able to say whether the complainant had forwarded school leaving certificate alongwith his complaint. He also states that he had not seized any school leaving certificate during the investigation from any witness. This witness has been put a specific question with regard to seizing the school leaving certificate and he has replied that since he had received the said certificate alongwith the complaint, there was no need for him to obtain it again. This witness has denied that he had not obtained the concerned school leaving certificate from the complainant. This

witness has also stated that he did not know whether any identification sheet is being prepared of the candidates at the time of their recruitments. The last witness examined by the prosecution is P.W. No.8 Dhirajlal Lavji Thakkar at Exh. 31. At the relevant time this witness was working as head constable in Bhuj head quarter. He was Company Major in the head quarters from 17/5/1987. As Company Major he was required to allot duties to the police constables and also to mark their presence. He stated that when the new appointments are made, their names are required to be entered into the recruitment register and also in the muster roll and thereafter they are being given direction to have appropriate training. According to this witness on 18/10/1987 the respondent had contacted him after office hours for reporting on duty. He identified the respondent in the Court. This witness also produced the recruitment register for the period between 28/2/1983 and 25/2/1991 and according to him on page 56 at serial no. 123 name of the respondent has been noted and the same has been noted in the hand writing of one Mr. Nanjibhai Laljibhai. This witness also states that the roll call is maintained of the police constables, who are required to report for training and their presence was being marked in the register. That at the relevant time marking of presence was being done by his Assistant Nanjibhai Laljibhai. This witness has been cross-examined by the defence and in the cross-examination he stated that entire administration of the training part of the duly recruited police constables was being done by R.S.I. He also states in his evidence that he would not be able to say how many other police constables were appointed alongwith the present respondent and that he would not be able to say how many persons and of what caste who were in training with the respondent without verifying the record. The evidence of this witness is led by the prosecution to establish the identity of the respondent. However, if the evidence is closely scrutinised, it would appear that this witness has seen respondent only on 18/10/1987 for some time after office hours. This witness was neither incharge of the training of the newly recruited police constables nor he himself was marking the presence of those police constables. He has no where in his evidence stated that he had occasions to see this respondent during the time the respondent was in service. It may also be noted that the evidence of this witness was recorded on 27/2/1991, when he had already retired then from the service. His evidence therefore, creates doubt whether he would be able to remember the respondent after a lapse of about 4 years and that too when he had met the respondent only for some time after office hours

on 18/10/1987. His identification of the respondent in the Court also therefore, becomes doubtful. This witness has admitted that unless and until he verifyied the record he would not be able to say that who other police constables took part in the training alongwith the respondent and that they belonged to which caste. There is therefore no special reason why this witness should specifically remember the respondent as the person having met him on 18/10/1987. The evidence of this witness, therefore, does not inspire any confidence.

7. The defence has examined two witnesses. Witness Kirtibhai has been examined to show that respondent has studied in the 8th standard in the year 1980 and this witness has produced the school leaving certificate of the respondent at Exh. 42. The second witness has been examined by the defence is Juvansinh Jagatsinh to show that respondent was working as labourer in his field for the last 5 to 6 years and in their community there would be more than one person having the same name. He also says that there was one another person of the same name i.e. name of the respondent staying in the village.

It is the prosecution which has to prove guilt of the accused beyond any reasonable doubt. As discussed above, the evidence led by the prosecution for this purpose does not inspire any confidence. At best it can be said that the prosecution has been able to prove that the certificate in question was false. However, there is no relevant and cogent evidence on record to show that it was respondent who had produced the same with a view to obtain service in the Police Department and when that link is missing, the respondent cannot be said to be guilty of committing any of the offence with which he has been charged. The Ld. Magistrate has also assigned various other reasons including that of belated complaint for passing the order of acquittal and I am in broad agreement with the reasonings assigned by the Ld. Magistrate. I, therefore, do not go into other details of the case. In my opinion, the prosecution has not been able to bring home the charge against the respondent and this appeal should, therefore, fail. The appeal fails and it is dismissed.

* * *

* Pansala.